
*Remarks of Senator Estes Kefauver
concerning the
Internal Security Act*

Debate showing need for more
effective legislation to control
Communists and other subversives

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REMARKS
OF
HON. ESTES KEFAUVER
OF TENNESSEE

The VICE PRESIDENT. The Senator from Tennessee is recognized for 4 minutes.

Mr. KEFAUVER. Mr. President, there is prevalent in this land today an understandable rising fury against communism and Soviet Russia. Our people are concerned, alarmed, afraid, and some are even hysterical. Fear and hysteria are powerful moving forces, and cause men to do things which in calm courage they would never even consider doing.

Were it not for the insidious threat of communism, and were we not in the very shadow of world war three, virtually no thinking American would ever consider asking Congress to enact laws to control the thoughts of any of its citizens. But communism is a fact and the ominous shadow of another terrible world war is a fact. And we are afraid. The very nature of communism causes us to fear harm from within as much or more so than we fear attack from afar. I think all of us agree to that, and the multiplicity of bills to control communism within our borders attest the truth of that assertion.

I am anxious to place on the statute books the most effective law or laws that we can draft to deal with this problem. I know that this feeling is shared by all of my colleagues. And we want to do this before this session recesses.

The question is, What best shall we do about it? Let us be practical.

The President announced Thursday, September 7, 1950, that he would not sign the McCarran-Mundt-Ferguson bill into law. The President thinks this bill endangers our basic freedoms, and many of us agree with him. This means that Congress might leave Washington with no antisubversive law on the statute books. If the McCarran bill is passed and then Congress carries out its announced schedule of going into recess on Saturday, Congress will not be here to act on the President's veto. The result would be no legislation at this session. We all agree that some legislation is necessary. I agree readily that we of the

Congress have our legislative duty to perform and that the President has his. Also I agree that we should not let a threat of veto deter us from doing our duty as we see it. But in this case we have a time set for recess which is bound to arrive before the President could act upon this bill. Then we cannot overlook the fact that the Constitution by the veto power gives the Chief Executive legislative power equal to one-sixth of the membership of the House and of the Senate.

Five of my colleagues and I have joined in presenting the Kilgore substitute to the McCarran bill. That substitute represents our views of what best we can do to solve the problem. I think it removes the objections the President finds in the McCarran bill. I think the President would sign the Kilgore substitute into law, although I am not privileged to speak for him.

What does the Kilgore substitute anti-Communist bill do? It puts those disloyal and dangerous individuals within our borders in confinement immediately in time of war or national emergency. It takes them out of circulation; it provides for action first and talk later; it puts away spies and saboteurs until the danger is past or until they can show by appeals to a board and to the courts that they are detained wrongfully. That is best what we can do, Mr. President; that is what we would have to do and we ought to have a law for that purpose—round up the Communists and others who would harm these United States in time of emergency and put them behind bars. That is what I favor; that is what I have proposed. The FBI does not now have that authority, and it will not have that authority under the McCarran bill even if it should pass over the President's veto. I do not intend to be stampeded into voting for a bill which will die a-borning. The President of the United States, the Director of the Federal Bureau of Investigation, the Attorney General of the United States, the directors of all our armed services intelligence units have said the McCarran bill is not the way to approach the problem; that its passage will make matters worse instead of better.

J. Edgar Hoover is the best authority, the man upon whom we can most confi-

dently rely in this matter. What does he say? In the 1949 FBI report he says:

Suppression and outlawing of subversive organizations by legislative enactments are not the answer. As a Nation, we need have no fear so long as actions of those residing within our shores are open and aboveboard.

Mr. Hoover testifying before the House Un-American Activities Committee admonishes that he "would hate to see a group that does not deserve to be in the category of martyrs have the self-pity that they would at once invoke if they were made martyrs by some restrictive legislation that might later be declared unconstitutional."

This view is shared by outstanding newspapers such as the New York Times, the Washington Post, and the Chattanooga Times. Are not these men in better situation to gage preventive methods than we? In addition, we all remember the points made so forcibly by Governor Dewey in his memorable debate with Governor Stassen. Governor Dewey proved conclusively that plans such as the McCarran-Mundt-Ferguson bill have never worked in any nation where they have been tried.

I consider myself to be just as anti-Communist as Mr. J. Edgar Hoover, and just as pro-American as Mr. J. Howard McGrath.

These officials, charged with the duty of protecting the internal security of the United States, know what laws they need as implements to do the job. Mr. Hoover has said provisions, such as are contained in the McCarran bill, are not the answer. Mr. Hoover says it is better in time of peace that actions of American residents remain open and aboveboard. Mr. Hoover said Thursday that the FBI considers about 12,000 Communists in this country dangerous—half of them American citizens and many of them native-born. The FBI knows who and where these dangerous and 38,000 additional Communists are—knows better than we how to deal with them.

I say to my colleagues that it is high time we stop conjecturing, and act on the advice of men, such as J. Edgar Hoover, who are experienced—where we are not—in the handling of persons who would harm the United States. We seem to be running over each other in a contest to see who can devise the most "anti" anti-Communist legislation; we should be listening to the counsel of

J. Edgar Hoover and other experts in the field.

My support of the Kilgore bill rather than the McCarran bill means I am not foolish enough to support a bill which the experts say will not work and which the President will not sign, merely because it is labeled "anti-Communist." It means that I accept the statement of J. Edgar Hoover that driving the Communists underground to bore from underneath is not the answer to the problem. It means that I am ready and eager to put all Communists and internal enemies of the United States behind bars anytime the FBI and men who know Communists best say the word. It means that fear shall not drive me to substitute my own theories for the experience of experts.

I shall not here deal at length with the constitutional objections to the McCarran bill. These objections are well set forth in the minority report, and some days ago in colloquy with the Senator from South Dakota [Mr. Mundt] I explained some of my particular objections: One does not need to be a sagacious constitutional lawyer to find basic objections to the McCarran bill. Any intelligent layman who will read the Constitution and then read the bill will have a feeling that it endangers many of the basic rights we Americans hold so dear—freedom of speech, press, assembly, thought, and the right not to have to give evidence against one's self.

Take section 4, for instance. The Constitution gives a Member of Congress the right to propose any amendment to the basic law he desires. It gives the citizen a right to support that amendment. Yet the Congressman and the citizen would be guilty of violating section 4 if he did any act—proposing a constitutional amendment is not excepted—which some court might say contributed to establishing a totalitarian dictatorship in the United States. This includes any town or municipality. Totalitarian dictatorship is defined in the preceding section to mean one party rule where no opposition is permitted. This could be used by unscrupulous prosecutors to punish people upon suspicion, hearsay, or flimsy evidence, even though their acts are protected by the Constitution.

Section 4 (b) could result in convicting an innocent person of orally passing

on confidential information, even though he may not actually know it was classified and did not intend to do harm to the Government.

Section 4 (c) would make Mr. Churchill or any representative of a foreign government guilty if he asked for information which was classified or confidential. The section is not limited to unfriendly governments. This is a heavy burden to put on people with whom we are trying to get along.

As to these sections—
They would—

In the words of the late Charles Evans Hughes, Jr.—

include attempts to bring about such result by expression of opinions through speech or publication, or by participation in peaceable assemblies, designed to bring about changes in the Government through orderly processes of amendment of the Constitution. Statutes which spread as wide a net as that violate the first amendment.

In addition, section 4 fails to meet the test of due process which requires that the definition of a crime must be sufficiently definite to be a dependable guide to the conduct of the individual and to the court and jury which passes upon his guilt or innocence. This is true of the critical terms "vested in, or exercised by or under the domination or control of, any foreign government, foreign organization, or foreign individual," and "any movement." Interpretation of these phrases receives only the slightest aid from the legislative declarations in section 2, because the latter relates to a particular "Communist totalitarian dictatorship" and to a "world Communist movement," whereas section 4 denounces attempts to establish any totalitarian dictatorship controlled by "any" foreign organization and "any" movement so long as it aims at that end. Especially in such a context the terms "attempt," "facilitate or aid," and "actively to participate" are too vague and indefinite for a criminal statute (p. 416 of hearings on H. R. 5852).

About last year's section 4a, which is substantially identical with the present provision, Tom Clark said:

From the language of the bill, it appears uncertain whether mere membership in a Communist organization as defined in section 3 would constitute a violation of section 4. The principle that a criminal statute must be definite and certain in its meaning and application is well established; and principle which may not be satisfied by the definitions and criteria of the bill. (*Connally v. General Construction Co.* (269 U. S. 385); *Lanzetta v. New Jersey* (306 U. S. 451) (p. 424 of Hearings on H. R. 5852).)

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Seth Richardson, Chairman of the Loyalty Review Board, had this to say about the old section 4—and it applies with equal force to the present language:

I am inclined to the view that before section 4 of the act can be deemed a proper exercise of the power of the Congress to protect the country against threatened danger, the bill should provide that efforts to establish a totalitarian dictatorship must be accompanied by force and violence and by unconstitutional procedures.

Mr. John W. Davis' similar opinion was, in part, as follows:

Without pausing to consider such constitutional questions as are raised by the general frame of the bill or others which might appear in the course of its attempted enforcement, I am constrained to think that because of its indefiniteness and uncertainty the bill fails to meet the constitutional requirement of due process. It is a highly penal statute of a character concerning which the Supreme Court has but recently said: "The standards of certainty in statutes punishing for offenses is higher than in those depending primarily upon civil sanction for enforcement. The crime 'must be defined with appropriate definiteness'" (*Winters v. New York*, decided March 29, 1948 (338 U. S. 507, 515)).

In this opinion the Court goes on to say—pages 515-516:

There must be ascertainable standards of guilt. Men of common intelligence cannot be required to guess at the meaning of the enactment. The vagueness may be from uncertainty in regard to persons within the scope of the act * * * or in regard to the applicable tests to ascertain guilt.

These principles are, I believe, of universal acceptance in all American courts.

In the light of these opinions by the Nation's foremost lawyers, I think we must agree that the Supreme Court would reverse convictions under many sections of the McCarran bill. Then after years of delay nothing worthwhile would have been accomplished. The Kilgore bill does not get into the matter of thought control or of curbing freedom of speech or of the press. During time of danger it merely puts dangerous Communists and fifth columnists out of circulation. There are no valid constitutional objections to doing this. The Government has a right to protect itself.

Furthermore, the McCarran bill group together five or six other measures. Some of these are good. Others are not. Some need much amending before passage. One such bill transfers from the State Department to the Justice Department many powers and rights in dealing

with Ambassadors and foreign representatives. The State Department says this would be calamitous. We should defer action on this bill.

I think those Americans who sent me here will approve my reasons and my action. I hope my colleagues will reconsider the ill-conceived McCarran bill and pass into law the Kilgore substitute.

I shall feel much more confident in reporting to my people if that is done. The McCarran bill is a clumsy catch-all and difficult of enforcement. I do not favor it as it now stands. I will vote for it if some amendments to give adequate protection to decent and loyal citizens are adopted. I shall present several very necessary amendments to section 4. I do not think we should follow the philosophy of voting for a bill regardless of whether it meets constitutional requirements, regardless of whether it is sound just because it is called anti-Communist. When I entered this body I took an oath to support the Constitution. I could not live with my conscience if I gave my approval to a bill which does violence to the Constitution, to the Bill of Rights, and which I think destroys many of those freedoms which make America the great land of the free. The Kilgore substitute is realistic and direct and would give the FBI the tools to do the job when the time comes.

That is why I sponsored the Kilgore substitute rather than the McCarran bill.

I have certain amendments which I shall propose at a later time, in connection with section 4.

The VICE PRESIDENT. The Senator from Tennessee is recognized for 7½ minutes.

Mr. KEFAUVER. Mr. President, section 4 of the bill has given many Members of the Senate a great deal of trouble. It is also the subject matter of considerable comment as to its constitutionality. From time to time such eminent lawyers as Mr. John W. Davis, Mr. Charles Evans Hughes, Jr., former Attorney General Tom Clark, and Mr. Seth Richardson have expressed opinions that various versions of section 4 were unconstitutional. It is, I think, the worst section of the bill, and, in my opinion, the bill would be greatly improved if that section were stricken from it.

If Senators will turn to section 4, it will be seen that section 4 (a) would make it a criminal offense for a Mem-

ber of the United States Senate to agree with a civilian for the purpose of presenting a constitutional amendment for the purpose of what might be termed setting up a totalitarian dictatorship. A totalitarian dictatorship is defined as being a one-party system where opposition is suppressed by force. That is a loose definition under which persons might be prosecuted for doing something which they had a legal right to do. Of course, under the Constitution anyone can offer a constitutional amendment to accomplish anything he wants to accomplish, and anyone can support such a constitutional amendment without running afoul of any law.

Furthermore, in section 4 of the usual constitutional provision with respect to force and violence is not present. It covers any act which might include speaking, writing a letter, a conversation, or anything else. The usual requirement as to force and violence is missing.

It should also be pointed out that it does not mean that a person has to commit an act with a view to setting up a totalitarian dictatorship in lieu of the Government of the United States. In its wide application it applies to municipalities, to any township, to any county, or to any small community that might contain only 10 persons. So it is a section which could be used for prosecution and persecution of people by thought control.

Subsection (b) on page 11 provides that any employee of the Government, and so forth, who passes any confidential information to any representative of a foreign country shall be guilty. I should like to point out that this subsection means that one need not actually see the confidential document. Someone may tell someone else, and the person involved may get it fifth-hand. However, if he told it to Mr. Winston Churchill when he was here, and it turned out that the information was confidential or restricted, that person would be guilty of a violation of this section of the proposed act, even though he may have had no intention to harm the Government of the United States. That is another instance where persons could be prosecuted right and left for offenses which they did not know they were committing, and without any intention to harm the Government of the United States.

Subsection (c) provides that any representative of a foreign government who asks for or seeks to obtain such confidential information shall be guilty. It would place a representative of a foreign country in the position of being guilty of violating a law of the United States if he asked anyone for any information about our defenses, the number of tanks, and questions along that line, at the very time when under the Atlantic Pact we have joined with foreign governments for the purpose of uniting our defense efforts in the Atlantic Pact.

Mr. President, this section in the hands of an energetic and unwise prosecutor could be used to control thought, to keep people from expressing their opinions and from doing things which they have a right to do under the Constitution. I think the bill would be greatly improved if the section were deleted.

I yield back the remainder of my time.

Mr. McCARRAN. Mr. President, the amendment offered by the Senator from Tennessee provides that on page 10, line 19, there be stricken out section 4. The amendment is not acceptable to us for the reason that it would remove section 4 in its entirety. Section 4 makes it unlawful for any person knowingly to combine, conspire, or agree, and so forth, to perform any act which would substantially contribute to the establishment within the United States of a totalitarian dictatorship under the control of a foreign government. It also makes it unlawful for officers or employees of the United States to communicate classified information to foreign agents, and for such foreign agents to receive such information. I believe such a provision is necessary in the bill if we are to meet the subversive problem on all fronts. I yield 5 minutes to the Senator from Michigan, if he desires to speak on the amendment.

Mr. KEFAUVER. Mr. President, will the Senator yield?

Mr. McCARRAN. Certainly.

Mr. KEFAUVER. Does not the Senator think that in some way or other a differentiation should be made between a friendly foreign agent and an unfriendly foreign agent? Certainly we do not want to place this kind of restriction on friendly people who come here representing a friendly government.

Mr. McCARRAN. Mr. President, the Senator might have asked that question of a certain nation 7 or 8 years ago.

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Today the answer would be in the negative. Seven or eight years ago we knew a friendly nation, which was supposed to be our ally. Today, how about it? For anyone to transmit classified information, and for anyone to receive it, should be prohibited by law.

Mr. KEFAUVER. I may say that it does not speak well of the Atlantic Pact and our participation in it if we put representatives of our friends, democratic countries, under restrictions which do not permit them to ask the simplest kind of questions without violating the law of the United States.

Mr. McCARRAN. If I have any time remaining, let me say to the Senator that this is a time when I believe the United States of America must look out for itself. We are very happy to be in the Atlantic Pact, and we hope to go along with it. We hope to be able to assist in the success of the Atlantic Pact. However, the internal security of the United States and our continuation under a democratic form of government is uppermost in my mind, now and at all times.

Mr. MUNDT. Is it not correct to say that if the amendment offered by the Senator from Tennessee prevails we would be actually striking out of the bill the provision which makes it illegal to perform an act which under the Kilgore substitute they would make it permissible to put a man in a concentration camp merely for thinking about performing the act?

Mr. FERGUSON. That is exactly correct.

Mr. KEFAUVER. The Senator knows that during the time of a national emergency the Government has a right to do many things which it cannot do in times of peace. That is the distinction between the Kilgore substitute and the provision in the bill referred to. This is proposed legislation for all time, not merely during the time of an emergency.

Mr. MUNDT. The proposed legislation requires an act to be performed, not merely having the Attorney General think that a man is thinking of performing it. The man must actually perform the act.

Mr. KEFAUVER. No; the section provides for agreeing to perform an act. It is not necessary to perform it.

Mr. MUNDT. He must combine or conspire with someone.

Mr. KEFAUVER. Combine, conspire, or agree.

Mr. FERGUSON. There are other ways of overthrowing a government than by force and violence. We learned that in Czechoslovakia. The force and violence comes afterwards, in order to consolidate and expand power and control acquired by other means. In other words, we are trying to do something about the kind of subversive acts that are really dangerous. I hope the Senate of the United States will not weaken the bill by taking out of it section 4.

The VICE PRESIDENT. The question is on agreeing to the amendment offered by the Senator from Tennessee [Mr. KEFAUVER].

Mr. KEFAUVER and other Senators requested the yeas and nays.

The yeas and nays were not ordered.

The VICE PRESIDENT. The question is on agreeing to the amendment offered by the Senator from Tennessee [Mr. KEFAUVER]. [Putting the question.] The "noes" appear to have it.

Mr. KEFAUVER. Mr. President, I ask for a division.

On a division, the amendment was rejected.

Mr. KEFAUVER. Mr. President, I have another amendment, lettered "F," which I offer.

The VICE PRESIDENT. The clerk will state the amendment.

The CHIEF CLERK. On page 10, line 21, after the word "act", it is proposed to insert "by force and violence."

On page 11, line 2, to strike out the period, to insert a colon, and the following: "Provided, however, That this section shall not apply to any act in connection with the sponsorship of a constitutional amendment."

Mr. KEFAUVER. Mr. President—

The VICE PRESIDENT. The Senator has 7½ minutes.

Mr. KEFAUVER. Mr. President, this amendment is a sincere effort to improve the bill, hoping that on final passage it will contain certain amendments so that I can vote for it. I voted a little while ago for the Kilgore substitute for the bill. If that had been agreed to, and some things were done to remove some of the objections which I have and which I think others have, I would expect to vote for the bill in the hope that in conference a bill might be agreed to which would even be acceptable to the President, so that we could end this session

with some legislation on this subject enacted.

This amendment is to section 4 (a), and would require that an agreement to perform some act must be carried out by force and violence. Otherwise, if a Member of the Senate agrees to propose a constitutional amendment, to have certain things happen in the Government of the United States, and someone on the outside agrees, if he offers such an amendment, which he has a perfect constitutional right to do, and he makes a speech or speaks to his neighbor about it, then he would be guilty under the section as it is now written. It would open the way to the promiscuous prosecution of people for acts which are accompanied by no force or violence, but merely on the word of somebody else. There would be at least justiciable issues under which people could be haled into court.

Mr. McCARRAN. Mr. President, will the Senator yield for the suggestion of an amendment to his amendment?

Mr. KEFAUVER. I have an amendment, and I wish to give my explanation of it.

All the attorneys who have considered this proposed legislation have raised some question as to the legality of or the constitutionality of section 4 (a) unless the act is carried out by force and violence. I think it should also be written into the bill that this provision should not apply to any act in connection with the sponsorship of a constitutional amendment.

Mr. McCARRAN. Mr. President, will the Senator yield?

Mr. KEFAUVER. I yield to the Senator.

Mr. McCARRAN. I wish to make the suggestion to the Senator that, so far as I am personally concerned, I would have no objection if the amendment read like this, "That this section shall not apply to the proposal of a constitutional amendment."

Mr. KEFAUVER. That is only half of the amendment. The other half is as to any act requiring force and violence.

Mr. McCARRAN. There is nothing in this amendment about that.

Mr. KEFAUVER. Yes; it proposes that on page 10, line 21, after the word "act" there be inserted the words "by force and violence."

Mr. MUNDT. Mr. President, will the Senator yield?

Mr. KEFAUVER. I yield.

Mr. MUNDT. I was thinking of speaking along the same line suggested by the Senator from Nevada. It seems to me the amendment of the Senator from Tennessee is altogether too broad in line 5 to carry out the purpose he has in mind as indicated by his remarks. Certainly we must not make the section inapplicable to any act, because there could be a great many illegal acts, conspiratorial acts, acts of violence. It seems to me that if the Senator would insert before the word "acts" some such modifier as "constitutional" or "legal" in connection with the constitutional amendment, he would carry out what he has in mind.

Mr. KEFAUVER. How about the provision relating to force and violence? The Senator and I have the same thing in mind as to the constitutional amendment provision, and that could be worked out in conference. The language proposed by the Senator from Nevada as to the second part of the amendment sounds all right to me, but that does not take care of the other objection, as to requiring that an agreement be accompanied by force and violence.

Mr. MUNDT. That is correct, but I think an altogether different element enters into the consideration of that part of the amendment, because the Communist line changes from time to time from force and violence over to espionage, infiltration, and subversion, and a great many other techniques and devices which are not accompanied by force and violence. So I think we would cripple the administrator if we limited the provision to acts accompanied by force and violence.

I have no objection to the second part, if it is modified as I have suggested. I think the first part of the amendment goes too far, because it would prohibit the administrator from changing his tactics to keep up with the constantly changing line of the Communists, which does not always entail force and violence.

Mr. KEFAUVER. In my opinion, unless the words "force and violence" are used in relation to some act which may be committed, it is not constitutional. I shall be glad to accept the language of the Senator from Nevada as to the constitutional amendment feature, but unless the rest of it is going to be accepted, I do not see that there is much to be accomplished.

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Mr. LONG. Mr. President, will the Senator from Tennessee yield?

Mr. KEFAUVER. I yield to the Senator from Louisiana.

Mr. LONG. What the Senator from Tennessee has in mind is to preserve the right of an American to advocate peaceful change of government by constitutional, legal processes.

Mr. KEFAUVER. That is correct.

Mr. LONG. On the other hand, he is perfectly willing to outlaw the advocacy of forcible overthrow of our Government by anyone.

Mr. KEFAUVER. That is correct. That is exactly my position.

Mr. FULBRIGHT. Mr. President, would it not be more difficult to prove foreign domination under the amendment than under the Smith Act, which did not require the proof of foreign domination?

Mr. KEFAUVER. I say frankly that "with force and violence" written into the amendment, the amendment does not differ greatly from the provisions of the Smith Act. I think the language "combine, conspire, or agree" is a little broader than the Smith Act.

Mr. FULBRIGHT. My point is that under the proposal now made it would be more difficult to prove foreign domination than under the Smith Act. It is not so effective, is it?

Mr. KEFAUVER. Under the bill, without the amendment, anything could be proved on anybody. It would be one man's word against another. It would be said that two people were getting together and saying they were going to set up a dictatorship in some small town. There would have to be a trial to determine whether they had tried to create a dictatorship in some small town, and Jim Jones, who might be an unnaturalized alien, who might be the boss of the town—

The VICE PRESIDENT. The time of the Senator from Tennessee has expired.

Mr. McCARRAN. Mr. President, this amendment would rather effectively emasculate section 4 (a) of the bill.

This is the section which provides that "it shall be unlawful for any person knowingly to combine, conspire, or agree with any other person to perform any act which would substantially contribute to the establishment within the United States of a totalitarian dictatorship the direction and control of which is to be

vested in, or exercised by or under the dominion or control of, any foreign government, foreign organization, or foreign individual."

This proposed amendment would, first, limit the category of acts, conspiracy to perform which is made unlawful, to acts "by force and violence."

Secondly, this amendment would add a proviso stating that this section shall not apply to any act in connection with the sponsorship of a constitutional amendment.

That phrase "in connection with" is extremely broad; and it appears that if this language should be adopted, any person who had sponsored a constitutional amendment would thereafter be able to indulge in any form of conspiracy without worrying about the provisions of this section; for the bare fact that he was the sponsor of a constitutional amendment presumably would protect him.

Possibly what the Senator from Tennessee means to suggest is a proviso making the section inapplicable to acts in furtherance of the adoption of a constitutional amendment; but that is not what his amendment says.

Mr. President, I do not believe this amendment should be adopted, or that it will be adopted; nevertheless, I feel it should be amended before it is voted upon.

Mr. KEFAUVER. Mr. President, will the Senator yield?

Mr. McCARRAN. I yield.

Mr. KEFAUVER. I accept the Senator's suggestion as to the language in the second part of the amendment.

Mr. McCARRAN. Will the Senator modify his amendment to that extent?

Mr. KEFAUVER. If the Senator will yield, I shall ask unanimous consent, Mr. President—

The VICE PRESIDENT. The Senator can modify his amendment in any way he pleases.

Mr. KEFAUVER. Mr. President, I modify the amendment so as to strike out the words "any act in connection with," and the word "sponsorship," and insert in place of "sponsorship" the word "proposal."

The VICE PRESIDENT. The clerk will read the amendment as it is now offered.

Mr. KEFAUVER. Yes, I wish the clerk would do so.

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The CHIEF CLERK. On page 11, line 2, it is proposed to strike out the period, insert a colon, and the following: "Provided, however, That this section shall not apply to the proposal of a constitutional amendment."

Mr. McCARRAN. Does the Senator modify the other part of his amendment?

Mr. KEFAUVER. No, Mr. President; I do not.

Mr. McCARRAN. Of course, I cannot accept it unless the Senator does.

Possibly what the Senator from Tennessee means to suggest is a proviso making the section inapplicable to acts in furtherance of the adoption of a constitutional amendment; but that is not what his amendment says.

Mr. President, I do not believe the amendment should be adopted or that it will be adopted; nevertheless I feel that it should be amended before it is voted upon. Therefore, Mr. President, I move to amend the amendment offered by the Senator from Tennessee [Mr. KEFAUVER] so as to make it read:

On page 11, line 2, change the period to a comma and insert the following: "Provided, however, That the provisions of this subsection shall not render unlawful any act done in furtherance of the adoption of a proposed constitutional amendment."

The Senator has already accepted that modification, but as to the first part of his amendment, he has not made any modification.

Mr. FERGUSON. Mr. President, will the Senator yield?

Mr. McCARRAN. I yield.

Mr. FERGUSON. Would not that allow a conspiracy to overthrow the Government and to do acts in furtherance of such conspiracy, even to the use of force and violence? What is the modification made by the Senator from Tennessee?

Mr. McCARRAN. The second part of the amendment has been modified.

Mr. FERGUSON. Will the Senator read the modification?

Mr. McCARRAN. Yes. On page 11, line 2, it is proposed to strike out the period, insert a colon, and the following: "Provided, however, That this section shall not apply to the proposal of a constitutional amendment."

Mr. FERGUSON. That covers only the proposal of a constitutional amendment.

Mr. MUNDT. Mr. President, reserving the right to object—

Mr. McCARRAN. A parliamentary inquiry.

The VICE PRESIDENT. The Senator will state it.

Mr. McCARRAN. Will it be proper at this time to ask for a division of the amendment?

The VICE PRESIDENT. Certainly. They are practically two separate amendments anyway.

Mr. McCARRAN. I ask for a division of the amendment so we may deal with that part which has been agreed upon by the Senator first.

The VICE PRESIDENT. Is there objection to the adoption—

Mr. KEFAUVER. I should like to have the whole amendment voted on first, Mr. President.

The VICE PRESIDENT. The Chair thinks a request for a division is legitimate, and the Chair orders that there be a division of the amendment.

Mr. KEFAUVER. Very well.

The VICE PRESIDENT. And that there be a vote separately on each. If there is no objection to agreeing to that part of the amendment in which the language has been modified, it will be adopted. The Chair hears none and that branch of the amendment is agreed to.

Mr. FERGUSON. Mr. President, is there any time left?

Mr. McCARRAN. I yield whatever time I have left, to the Senator from Michigan.

Mr. FERGUSON. Mr. President, I should like to say a few words as to the other part of the amendment. It proposes to insert the words "by force and violence."

The VICE PRESIDENT. The Chair wishes to say that there are 1½ minutes remaining.

Mr. FERGUSON. The main reason for not using the words "force and violence" was the testimony of Mr. Gates and Mr. Foster of the Communist Party before the Committee on the Judiciary. They said that they had now eliminated from their teachings and so forth the words "force and violence." They have altered their techniques, in other words. Partly they have done so because teaching or advocating overthrow by force and violence is prohibited under the Smith Act.

Anyone who has studied communism knows of their alternate techniques.

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That technique is to gain control in some way by conspiracy and infiltration, and by the blotting out of those who had been in power; then afterward to use force and violence to retain the power they have obtained.

In view of that switch in technique, we propose to make it a crime to overthrow the Government, to build and create a totalitarian government here, by acts which are short of force and violence. I hope the Senate will not change the language of the bill by adopting the amendment, because that would bring us back to the Smith Act, and we are trying to do something entirely different here than was done by the Smith Act.

The VICE PRESIDENT. Time has expired.

Mr. KEFAUVER. Is there any time remaining?

The VICE PRESIDENT. There is no time remaining.

The question is on the first branch of the Senator's amendment.

Mr. KEFAUVER. Is that the "force and violence" part?

The VICE PRESIDENT. The "force and violence" part; yes.

Mr. KEFAUVER. I ask for the yeas and nays on that part of my amendment.

The yeas and nays were not ordered.

The VICE PRESIDENT. The question is on agreeing to the amendment. [Putting the question.] The "noes" seem to have it.

Mr. KEFAUVER. Mr. President, I ask for a division.

On a division, the amendment was rejected.

Mr. KEFAUVER. May we now have a vote taken on the second part of the amendment dealing with proposal of a constitutional amendment?

The VICE PRESIDENT. That part of the amendment was agreed to by unanimous consent.

Mr. RUSSELL. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator will state it.

Mr. RUSSELL. I was under the impression that the Senate had agreed only to the suggested change in the language of the amendment, but if the amendment, as modified, has been agreed to, it is quite all right. I am in favor of that portion of the amendment.

Mr. KEFAUVER. Mr. President, I call up my amendment dated 9-11-50-E.

The VICE PRESIDENT. The Secretary will state the amendment.

The CHIEF CLERK. On page 11, line 4, after the word "thereof", it is proposed to insert the following: "(but this subsection shall not apply to employees of private corporations in which the Reconstruction Finance Corporation has ownership of a part of said stock as a result of the financing or refinancing of said corporation by the Reconstruction Finance Corporation)."

On page 11, line 7, after the word "means," it is proposed to insert "with intent to harm the United States."

Mr. KEFAUVER. Mr. President, this section is principally intended to apply to Government employees who, by virtue of their employment with the Government, have access to certain information which they may pass on to a representative of a foreign country. As it now stands, if some employee who might hear second or third hand about something—and of course this does not apply to anybody outside the executive branch of the Government—should meet a representative of a friendly government and should tell him something he, the employee, had heard, even though there was no intention to harm the Government of the United States—as a matter of fact it might be something that was being discussed in the interest of helping the Government of the United States, by the representative of a foreign military mission of a friendly country—then the Government employee would be guilty of a violation of this section. When our employees are acting in good faith, without any intent to harm the Government of the United States, I do not believe they ought to be considered guilty of something of which the average citizen would not be guilty.

The second point is that the amendment would include as employees of the United States the employees of any corporation in which the Reconstruction Finance Corporation owned a major part, I believe, of the stock of the company. The employees might not even know that they are working for a corporation in which the major part of the stock is owned by the Reconstruction Finance Corporation.

There have been many newspapers whose stock was owned in major part by the Reconstruction Finance Corporation. In such case, a reporter for one of those newspapers might inadvertently,

even though he should know better, pass out some information which might be confidential. In that case, he would be guilty under the provisions of this measure, even though he might not know that the newspaper was partly owned by the Reconstruction Finance Corporation.

The other day the Senator from Michigan [Mr. FERGUSON] said that if the du Pont Corp. were to have contracts for the manufacture of the H-bomb, the employees of that corporation should be placed under a restriction which would forbid their giving out information regarding the H-bomb. I think probably that should be done. However, I do not believe such a case would be covered by this amendment, because, as I understand, none of the stock of the du Pont Corp. is owned by the Reconstruction Finance Corporation.

I do not see why the employees of corporations whose stock is owned in part by the RFC should be treated differently from the employees of corporations whose stock is not owned by the RFC. After all, stock ownership is simply a matter of financing.

Mr. CHAVEZ. Mr. President, will the Senator yield?

Mr. KEFAUVER. I yield.

Mr. CHAVEZ. Is it the purpose of the Senator from Tennessee to exempt employees who might be connected with any corporation in which the RFC has an interest?

Mr. KEFAUVER. That is correct.

Mr. CHAVEZ. That is the purpose; is it?

Mr. KEFAUVER. Yes.

Mr. CHAVEZ. What difference would it make whether a person who commits a crime which is intended to be covered by the provisions of this bill, actually works for the Government or does not work for the Government?

Mr. KEFAUVER. My point is that everyone, regardless of the concern for which he works, should be covered in that connection. However, I take the position that without my amendment, the employees of the Kaiser-Frazier Corp., for instance, would be covered, but the employees of General Motors Corp. would not be covered. It seems to me that either all employees should be covered or else the provision should be limited to Government employees.

Mr. CHAVEZ. I wish to say to the Senator from Tennessee that I under-

stand that his amendment will do so. I think all employees should be covered.

Mr. KEFAUVER. No; the amendment does not cover all of them. We are endeavoring to leave out—

Mr. CHAVEZ. Let me say that I cannot see any reason why certain exceptions should be made, so that if A commits a certain act, it will be held to be a crime because he works for Corporation B, but if C commits a similar act, he will not be held to have committed a crime, because he works for the Government.

Mr. KEFAUVER. Of course I think there is a distinction, in this case, between a Government employee and a private citizen. I think the employees of a corporation in which the RFC happens to own some stock are private citizens; and if they are to be covered by this measure, then, in my opinion, all private citizens should be covered by it.

Mr. CHAVEZ. That is my point. I do not think there should be any exceptions. After all, a crime is a crime. If in any particular set of circumstances a certain law applies, it should be applied to everyone.

Mr. KEFAUVER. Mr. President, I yield back the remainder of the time allotted to me.

Mr. FERGUSON. Mr. President, will the Senator from Nevada yield some time to me?

Mr. McCARRAN. I yield to the Senator from Michigan.

Mr. FERGUSON. Mr. President, I wish to present a brief analysis of the amendment.

First, we must know what we are trying to prevent. The purpose of this part of the bill is to prevent Government employees and those working for Government agencies and those who are serving in capacities in which they are likely to receive very vital information which has been classified by the President as being security information, from knowingly and willfully giving such information to foreign agents or to persons who belong to Communist organizations.

Mr. KEFAUVER. Mr. President, this provision is not limited to Communists. It would include Winston Churchill or anyone else who happened to belong to a foreign government.

Mr. FERGUSON. Of course, Mr. President, any of us can be imaginative and can get away up into the clouds in connection with the consideration of

these provisions; but it seems to me that we must deal with people who keep their feet on the ground, and certainly the Communists do that. They know where they are going. The purpose of this provision is to prevent the giving out of Government secrets to persons who are known to be Communists.

If any person who owns stock in a Government corporation receives secrets from the Government of the United States—and in such case the fact of his ownership of stock in that corporation would be the basis of his receipt of such secret information—such person should not be permitted to divulge those secrets to Communists.

Mr. KEFAUVER. But on page 11 of the bill, in lines 9 and 10, we find the words "has reason to believe to be an agent or representative of any foreign government."

The bill does not say "Communists" at that point.

Mr. FERGUSON. Mr. President, let me return to what we said in regard to the previous amendment, namely, if a man is an agent of a foreign government, and if he comes to the United States and obtains from an American citizen or from a United States Government agency a secret to which he has no right, that man is an espionage agent. That is the sort of situation we are trying to reach by this measure. There are ample provisions through proper channels to waive this section in the case of representatives of foreign governments who may be entitled to the information.

The only persons who are entitled to receive such secret information are those whom the President of the United States or the heads of the departments allow to have such information. That is as it should be. Should Winston Churchill or anyone else come to the United States and go to certain Government employees and obtain our secrets from them? No; they should go through the channel that is provided for such purposes, namely, the State Department; or they should go to the President of the United States. He has the power to give them those secrets. If he does not, I say such persons should not get the secrets.

Mr. KEFAUVER. Mr. President, will the Senator yield?

Mr. FERGUSON. I yield.

Mr. KEFAUVER. The Senator from Michigan knows that in all the departments, practically all documents are

marked "confidential" or "restricted." Under such circumstances, it would be impossible for anyone to have a full appreciation of what might be marked "restricted."

This measure does not mean that anyone who might be so charged would have to have seen what was so marked. On the contrary, if such a person should pass on such information third hand, and if subsequently it should turn out to have been marked "restricted," that person would be guilty, because the amendment does not provide that the person passing on the information must have seen it.

Mr. FERGUSON. Mr. President, that is not a fact. The amendment provides that such a person must know that the material is restricted or must have reason to believe that it is restricted. How would that situation develop? It would develop in this way: If certain information is classified by the President or by the head of any Department or agency, with the approval of the President, then if any person knows that a certain paper or certain information has been classified by the President or, on his authority, by someone else as affecting the security of the United States, such person should not give the information to any foreign agent or any foreign government; it should be a crime for anyone to do so.

So we come back to the second part of the amendment, and I think we should have separate votes on the two parts of this issue. The amendment proposes that in order to come within the provisions of this measure, a person who gives to a known Communist or a known foreign agent such secrets belonging to the United States, which have been classified by the President or have been classified under his authority, must be proved to have an intent to harm the United States.

The Attorney General of the United States came before the committee in regard to the other bill, when it was before us in another form. He does not want that language in the law any longer, because if that language is included—namely, the word "with intent to harm the United States"—it will be found that in almost all cases it is impossible to prove such intent.

After all, what did the defendants in the Coplon case say? They said they never intended to harm the United States. However, it was necessary to

prove a specific intent to harm the United States.

So why should it not be made a crime for anyone to give to such person this kind of secret information, regardless of whether they specifically intend to harm the United States. Otherwise, why have classified data? After all, the giving of such information could very easily harm the United States. That is why we should not include these words in this measure, and thus compel the Government to prove beyond a reasonable doubt that when such persons give away such material, they intend to harm the United States.

Mr. MUNDT. Mr. President, will the Senator yield?

Mr. FERGUSON. I yield.

Mr. MUNDT. Is it not true that in the Hiss case, in the Coplon case, and in all the other cases of that sort, the defendants always said they had no intention of harming the United States?

Mr. FERGUSON. That is correct.

Mr. MUNDT. And it was virtually impossible to prove that they did intend to harm the United States.

Mr. FERGUSON. Of course.

Mr. KEFAUVER. Mr. President, will the Senator cite a case in which it has not been possible to prove intent? It is a good, decent, American citizen gives information to a representative of a foreign government, is that American to be put in jail merely because he passes on the information? Should it be possible for such an American to be put in jail unless there is a showing that in talking with the representative of the foreign nation or foreign government, that American citizen intended to harm the Government of the United States? It is unthinkable that such a thing should be provided, Mr. President.

Mr. FERGUSON. Mr. President, I say to the people of all friendly nations as I say to the citizens of America who may go into other friendly nations, the place to obtain information is at the top, not to snoop around and try to get information here and there from people who are not authorized to give information. Suppose this amendment were to apply, and someone asked, "Why should not a man down the line somewhere give information concerning atomic energy secrets?" It ought to be a crime for him to do that, whether he intends to harm the United States or not.

Mr. KEFAUVER. Mr. President, will the Senator yield for a question?

Mr. FERGUSON. I yield.

Mr. KEFAUVER. I have been on missions with Members of the Senate, when I was in the House—even with the distinguished Senator from Michigan. I recently heard the Senator from Washington make a report. Had we gone to a friendly country and had we been confronted with the restrictions such as are contained in this proposed legislation, we would all have returned home very wrought up about it. We would have said, "We cannot get those fellows to tell us anything. They have to run up and see the director of the division. They would not even talk with us." In his recent report, the Senator from Washington told about the vast amount of information which he received and the friendly manner in which he was received by the officials. Had they had in their own country a restriction such as this, the Senator from Washington would have returned home without any information, and he would have favored kicking them all out of the Atlantic Pact, I am afraid.

Mr. FERGUSON. Mr. President, I again say that the agent of any friendly nation who comes to the United States wanting information which is secret, and is classified by the President, should go to the President or to the agency head and obtain clearance, in order that he might receive it.

The PRESIDING OFFICER. (Mr. HOEY in the chair). The Senator's time has expired.

Mr. FERGUSON. I hope that both of these amendments will be voted down.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Tennessee.

Mr. KEFAUVER. I ask for the yeas and nays.

The yeas and nays were not ordered.

The amendment was rejected.

Mr. KEFAUVER. Mr. President, I have one more amendment which I desire to offer. It is my amendment of September 11, 1950, lettered "D."

The PRESIDING OFFICER. The clerk will state the amendment.

The LEGISLATIVE CLERK. On page 11, line 23, after the word "indirectly", it is proposed to insert "with intent to harm the United States."

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Mr. KEFAUVER. Mr. President, paraphrasing the provision of the bill, it says that any agent or representative of a foreign government, whether it be friendly or unfriendly, who comes to the United States and seeks to obtain, or attempts to obtain, directly or indirectly, from any officer or employee of the Government, information which turns out to have been classified or confidential, or who attempts to obtain from any corporation the stock of which in whole or in part may be owned by the Government, would then be guilty. The burden would be placed upon a visitor from a friendly nation to this country of ascertaining whether the person with whom he conversed had the authority of the President to impart to him the information desired.

Furthermore, he would have to ascertain whether a corporation from whom he was seeking information had an RFC loan; otherwise he might be getting information which would come within the prohibition of this bill. I think it would completely put an end to communication and exchange of information between the military officials of this country and other countries. For example, it is impractical to expect General Montgomery or some Canadian general who may come here for the purpose of conferring with the military leaders of the United States to ascertain whether, when he is talking with a colonel or with someone connected with the National Resources Board, trying to effect arrangements involving the defense of this country as well as his own country, to be placed in a position of having violated the law unless he first goes to the trouble of finding out what the law is, and, second, finding out whether the person with whom he is talking has been designated by the President or by the agency head as a proper person to impart to him the information sought.

I yield the remainder of my time.

Mr. FERGUSON. Mr. President, I should like to say merely a few words regarding this amendment. It is identically the same as the amendment the Senate voted on before, except that it comes under the "(c)" section regarding the receiving or the attempt to receive information. We should not change the section. The argument which we made regarding the other amendment is also applicable to this. The Attorney Gen-

eral says it is practically impossible to prove intent to harm the United States.

Mr. KEFAUVER. Mr. President, if the Senator will yield, can he cite one case in which the proof of intent broke down?

Mr. FERGUSON. I cannot cite cases, now.

Mr. KEFAUVER. The Senator says it is impossible to prove the intent to harm the United States, yet he is unable to cite any case in support of that contention, I take it.

Mr. FERGUSON. I say it is practically impossible, in view of the fact that the intent must be proved beyond a reasonable doubt.

Mr. KEFAUVER. Will the Senator name one case in which it has not been proved?

Mr. FERGUSON. There have been very few indictments under sections of this kind, and it is therefore impossible to cite cases. The Attorney General says that the inability to prove specific intent is the reason that more indictments have not been returned. That was the situation in the Alger Hiss case. That was the reason assigned for not prosecuting him originally. It was feared that the intent to harm the United States could not be proved.

Referring to the illustration given by the Senator of a supposed visit to this country by General Montgomery, does the Senator think that if he came here for information he would be talking indiscriminately to everyone within the department concerned? No; he would be talking to the head of the department who had been authorized to talk with him. If the head of the department had not been authorized to talk with him, then he should not give him the information requested. There may even be secrets which the President of the United States does not want to have imparted to anyone, and, if he so classifies certain information and does not thereafter declassify it and authorize that it be given to the head of a foreign government, or to a Communist, or to an officer of the Communist Party, then the information should not be imparted.

Mr. O'CONOR. Mr. President, will the Senator yield?

Mr. FERGUSON. I yield for a question.

Mr. O'CONOR. In the event of a duly accredited representative of a foreign government coming to the United States

in order to work in conjunction with our own authorities, would it not be possible to have any information which ought to be given to him, given with the approval of the President or head of the department?

Mr. FERGUSON. That is correct, and it will be given to him because he will be contacting the head of the department, and he will be receiving the information which will have been declassified so far as he is concerned.

Mr. KEFAUVER. Mr. President, will the Senator yield to permit me to ask the Senator from Maryland a question?

Mr. FERGUSON. I ask unanimous consent that I may yield for that purpose without losing the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KEFAUVER. The question by the Senator from Maryland brings up the very objection I have to this provision. The Senator from Maryland supposed a case in which the representative of a friendly foreign government comes to the United States and contacts the officials in a certain department. That person ought to have the right to ask the people he is contacting in the Government, who supposedly have been designated for the purpose of giving him certain information, and they ought to be cleared by the President to talk with him. But are we to place upon that representative of a friendly country the burden of ascertaining whether someone in uniform with whom he talks, who apparently has the right to impart to him the desired information, when he goes to the proper place to get the information—are we to require him to insult our country and the people with whom he is talking by asking them, "Have you been cleared by the President to talk with me? I cannot listen to you because I do not know whether you have authority to give me this information."

Mr. KNOWLAND. Mr. President, will the Senator yield at that point?

Mr. KEFAUVER. I yield.

Mr. FERGUSON. The Senator from Tennessee does not have the floor, but I am glad to yield.

Mr. KEFAUVER. I am sorry.

Mr. KNOWLAND. Let us take for example an atomic scientist who comes to the United States, who perhaps has had full access to our information, and who talks with someone in this Government. Should he not be required to

know that the person he talks to is authorized to divulge information of the kind he is seeking. The person, though wearing a uniform, may have no authority, and perhaps should have no authority, to reveal secrets, and it would be a violation of security if he did so. The mere fact that a man wears a uniform of the Army does not entitle the visitor to accept from him information of a secret nature. Anyone who served in the recent war would know that there are various classifications. People were cleared to receive certain types of information. The fact that a man wore a uniform did not of itself entitle him to receive or to impart secret information.

Mr. KEFAUVER. The Senator from California brings up another inequity. This foreign agent might talk with a representative of the du Pont Co. who might be manufacturing a secret weapon. He might talk with complete impunity. But if he talked with some major or colonel who has not been specifically cleared, he would be guilty. A great burden would be placed upon a

friendly foreign representative who comes to this country.

Mr. FERGUSON. Mr. President, what we are trying to do is to catch espionage agents who are trying to secure secrets which have been classified by the President of the United States for the safety of America. I hope the Senate will leave the section as it was drawn in the Judiciary Committee, where we spent hours and days trying to make the bill comply with what the Attorney General felt he needed in order to catch espionage agents, so that he would not have to prove beyond a reasonable doubt that they were harming the United States.

I hope the Senate will vote down the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Tennessee. [Putting the question.] The "noes" seem to have it.

Mr. KEFAUVER. Mr. President, I ask for a division.

On a division, the amendment was rejected.

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